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**From:** [REDACTED]  
**Sent:** Friday, April 12, 2013 8:48:59 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Bcc:**  
**Subject:** RE: 6231(g)

I don't think we can reasonably rely on the return if we are aware of contrary facts. But the point in time that our reliance is no longer justified making section 6231(g)(2) inapplicable has never been directly addressed by the courts. The same issue was addressed, however, before section 6231(g)(2) came into existence and the courts have held that the TEFRA/ non-TEFRA determination is made at the beginning of the audit and does not change based on the audit results. Harrell v. Commissioner, 91 T.C. 242 (1988); Nehrllich v. Commissioner, 2009 WL 1284067 (9th Cir. 2009); Doe v. Commissioner, 116 F.3d 1489 (10th Cir. 1997). Section 6231(g)(2) may have been intended to codify these court holdings.

[REDACTED]